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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/310,086	05/11/1999	HARM J.W. BELT	PHN16638V	8336
24737	7590	05/17/2005	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510			GRIER, LAURA A	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/310,086

Applicant(s)

BELT ET AL.

Examiner

Laura A. Grier

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-4 and 8-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. The indicated allowability of claims 2-4 and 9 is withdrawn. Rejections based on the newly cited reference(s) follow.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 2-4, and 8-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 09196064. Although the conflicting claims are not identical, they are not patentably distinct from each other because each is drawn to an audio processing arrangement for controlling and maximizing the power measure and limiting the combined power gain measure of processed audio signals.

Regarding claim 2, application no. 09196064 (herein, appl-064) discloses in claim 1 and 2, a plurality of audio sources, which reads on a plurality of audio sources; a processor, which

reads on a processing means; a combiner, which reads on a combining means; a controller, which reads on a control means; wherein the processor includes scaling means, which further reads on the processing means comprising a scaling means.

Regarding claim 3, appl-064 discloses in claim 1 and 3, a plurality of audio sources, which reads on a plurality of audio sources; a processor, which reads on a processing means; a combiner, which reads on a combining means; a controller, which reads on a control means; wherein the processor includes a plurality of adjustable filters, which further reads on the processing means comprising a plurality of adjustable filters.

Regarding claim 4, appl-064 discloses in claim 4 the audio processing arrangement comprising delay elements, which reads on the audio processing arrangement comprising delay elements.

Regarding claim 8, appl-064 discloses in claim 1, a plurality of audio sources, which reads on a plurality of inputs, therein; a processor, which reads on a processing means; a combiner, which reads on a combining means; and a controller, which reads on a control means.

Regarding claim 9, appl-064 discloses in claim 1 and 2, a plurality of audio sources, which reads on a plurality of audio sources; a processor, which reads on a processing means; a combiner, which reads on a combining means; a controller, which reads on a control means; wherein the processor includes scaling means, which further reads on the processing means comprising a scaling means.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claim 8** is rejected under 35 U.S.C. 102(e) as being anticipated by Lehr et al., U. S.

Patent No. 5793875.

Regarding claim 8, Lehr et al. (herein, Lehr) discloses a directional hearing system.

Lehr's disclosure comprises an acoustic receiving system consisting of a housing worn about the neck of a user, wherein the housing includes two or more microphones which reads on a plurality of audio sources generating a plurality of input audio signals; signal processing electronics which combines the audio signals received by the microphones, in which the acoustic receiving system including the microphones, and signal processing electronics (preamplifiers, filters, power amplifiers, weighting means, gain controls and summers) constitutes as the audio processing arrangement; the signals are processed and combined via a summer to provided a limited combined audio signal and amplified to provide a raised power level (abstract, col. 3, lines 22-31, and col. 23, lines 62—67 –col. 24, lines 1-5, figures 2, 4, 9, 10-11), which indicates the audio processing arrangement comprising control means for controlling the processing means (which is inherently provide as evident by the function of the receiver and limited gain of the combined audio signal and raised power level of the power amplifier for output) to maximize a power

measure of the combined audio signal, and limiting the power gain measure of the processed audio signals to predetermined value.

Response to Arguments

6. Applicant's arguments/remarks with respect to claims 2-4 and 9 have been considered but are moot in view of the new ground(s) of rejection.


The Double Patenting rejection is the basis of the new rejection. The applicant did not address the prior art rejection, particularly in respect to claim 8, since claim 8 was not amended to overcome the prior art rejection of Lehr et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Grier whose telephone number is (571) 272-7518. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh N. Tran can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Laura A. Grier
May 12, 2005